

APPROVED: 11/16/15

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
OCTOBER 19, 2015**

A Regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, October 19, 2015, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Tim Doherty, Chairman
Jack Jannarone, Deputy Chairman
Ray Devereaux

Absent:

Tim Donnery
Tony Galu

Alyse Terhune, Attorney, (Lewis & McKenna)

ALSO PRESENT: John Hager, Building Inspector, Konstantinos G. Fatsis, Esq., June Gunza, Town Councilwoman, Erik Smith, John Gunza, Rakhil Patel, Dilip Patel, Nicole Renda, Joseph S. McCormick, John Loch, and Sean Cockrill.

MR. DOHERTY: Thank you all. Roll Call for this evening, we have Ray Devereaux, Jack Jannarone, myself, Counsel Alyse Terhune, John Hager, Building Inspector, and Fran DeWitt, Recording Secretary. Absent are: Tim Donnery and Tony Galu.

First on the agenda for this evening is to approve the Minutes of September 21, 2015.

A motion was made to approve the September 21, 2015 Minutes.

Motion: Mr. Devereaux Seconded: Mr. Jannarone Approved

Holiday Inn Express, 1106 Route 9W, Fort Montgomery, NY, Mr. Dilip Patel and Mr. Rakhil Patel.

MR. DOHERTY: Next on the agenda is the Holiday Inn Express application. Gentlemen, it is my understanding that we are starting back at zero again. You have an amended application. Could you give us an explanation of how you have changed the plans? I wish I had an easel for you.

MR. JOHN LOCH: For the record, my name is John Loch, Engineer and Surveyor working for AFR Engineering. The application is modified to change two things primarily. We are looking to put an addition onto the end of the existing building and then put up another separate building.

MR. DOHERTY: And that separate building is going to be?

MR LOCH: Is the one we were seeking a height variance on. In the process of reviewing things for the construction process, in terms of what they wanted to get into the building various facilities and things, they found that it really was not an efficient way to try and develop the site. Additionally, we really wanted to see if we could keep more of the footprint, or I should say less footprint, so we would have more available area for parking.

What we have done is we have amended the application. Essentially, we still have the same footprint for the additional building, but we are going up even a little bit higher. What it enables us to do is things like fit in a pool inside this building so that you can have it where people in one facility can stay in that facility to use the various amenities.

We don't think it is a particularly onerous thing going up somewhat higher on it. It does not seem to have much of an impact on things but that is how we have amended the application. It does allow us also though, to keep the parking in this area. As you can see as you go further north, the property is very, very steep. If we had to build that out, in terms of trying to put in parking there, it would be a substantial undertaking trying to do that. That is really why we have changed the application. Essentially, we are now seeking a variance that would allow us to go up sixty foot in height for the building.

MR. DOHERTY: Is that correct that that is all this particular application is asking for is just a height variance at this time?

MS. TERHUNE: Yes, they were asking for fifty feet and now it is up to sixty. There is another story on the building. I would go ahead and open the Public Hearing.

MR. JANNARONE: Do we have to advertise again and start all over?

MR. LOCH: Yes, we understand that.

MS. TERHUNE: Right, but people came out for a Public Hearing so we should open it up to see if there are any comments.

MR. DOHERTY: A Public Hearing was held for this project in September. A new Public Hearing will need to be set.

A motion was made to set a Public Hearing for November 16, 2015 for this project.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

MR. DEVEREAUX: The banquet hall is out, the parking is in. Will you be having any food in either of the two facilities?

MR. PATEL: No, there will be limited service, similar to the existing Holiday Inn Express that is already there, with free breakfast. No restaurant.

MR. DEVEREAUX: Thank you.

MR. DOHERTY: See you gentlemen next month.

MR. PATEL: Thank you very much, sorry for the trouble.

MR. DOHERTY: No trouble, you are following due diligence.

MR. HAGER: Will you prepare another hearing notice?

MS. TERHUNE: Yes.

MR. HAGER: So the Board is in agreement here, the Applicant has asked my interpretation as to how we measure building height. I told him that we measure that to the highest point of the building, less the items that are excluded out in our Code, like chimneys and elevator towers. I think that is what he is going to present, sixty feet as his highest point.

MR. DOHERTY: That is how we interpreted this building over here, including the parapet. Are we all on the same page?

MR. JANNARONE: Yes.

Sean Cockrill, 11 Mountain Avenue, Highland Falls.

MR. DOHERTY: Next up on our Agenda is Mr. Sean Cockrill. Will you be the only person speaking to this application?

MR. COCKRILL: Yes.

MR. DOHERTY: Mr. Cockrill, raise your right hand, please. Do you swear to give all the information as truthful and accurate to the best of your ability for this application?

MR. COCKRILL: Yes.

At 7:11 P. M., a motion was made to open the Public Hearing.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

MR. DOHERTY: Mr. Cockrill, please go over your plans for this application.

MR. COCKRILL: Good evening, my name is Sean Cockrill, and I am here seeking a variance for parking for my project at 11 Mountain Avenue, which is the old auto body and welding shop located in between the fire station and the fire station parking lot off of Mountain Avenue. My project is to take that existing structure and turn it into a cross fit gym.

The reason for the variance is that for a business of a fitness center, it requires a certain amount of parking spaces. In my case, we require 14 parking spaces. This property only has one parking space which is on the west side of the building. In between the building and the fire house parking lot there is a side road that fits a couple cars but one in and one out at one time. We are seeking a variance for parking due to our proximity, because we are 200 feet away from Main Street and about 400 feet away from the municipal parking lot, to be considered into that Exempt District where we would be allowed additional parking either on Main Street or the municipal parking lots in the village. I am here tonight to answer any questions or if you need any clarifications.

MR. DOHERTY: For the Record, I have a copy of the legal notice from the News of the Highlands and the Times Herald Record. Do you have copies of the Affidavits of Mailing and Posting?

MR. COCKRILL: Yes, posting and mailing, and all of the certificates of mailing. I will give you the originals and keep the copies.

MR. DOHERTY: Does anyone from the audience have any comments on this application? Sir, please stand and state your name.

MR. ERIK SMITH: My name is Erik Smith. I am on the Board of Directors of the Highland Falls Fire Department. I am also the Assistant Chief. In the land use arena, I think I have some experience. I have been on the Town's Planning Board for 12 years, and I have been the Chairman for the last six years. I think I am a little familiar with land use.

My first question is: I don't even understand why we are here. I have read the Code a number of times. A fitness center is not a permitted use in the Village of Highland Falls. Regardless of whether we think it is a good idea, which I do, your Board does not have the capacity, nor does the Building Inspector, to allow a non-conforming use without giving a use variance. I don't know how we come up with a formula for parking spaces when it is not a permitted use. Regardless of the variance that you are being asked for, the Code is pretty clear that you cannot approve something that is contrary to the laws of the town. Just because you are

being asked for a variance for parking spaces, since the use is not legal, you cannot grant that, in my opinion.

On the side of the 14 parking spaces, we have pretty big concerns on the fire side. That parking lot is right next to the use and we feel if it was granted, regardless of what the business owner tries to do, people will undoubtedly use that lot. They will use it out of convenience, i.e. “I just have to run in to drop this off,” etc. We don’t have the ability to secure the parking lot because we need the members to be able to pull right in at a moment’s notice and an emergency. It is a volunteer fire department. We are relying on members coming from home 9 out of 10 emergencies we are dispatched to. We need that parking lot as ours and to be ready at all times. We feel, regardless of other spots farther away in the village, we know human nature and we know people will use this lot and it will force us to be the bad guy in attempting to enforce parking in our own lot. We have plenty of work to do on other things, fighting fires, etc. The last thing we want to be doing is regulating parking.

On the first note, I really have a serious concern about that. I think the Code needs to be updated. The same thing happened with my board last year or two years ago. We thought it was a good plan, but we did it right. I, even as the Chair, sent a letter to the Town Board asking them to amend it for good reason. We did not attempt to operate contrary to what the zoning is.

MR. DOHERTY: Thank you, anyone else?

At 7:18 P. M., a motion was made to Close the Public Hearing.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved.

MR. JANNARONE: It raises a legal issue of use. Didn’t we discuss this last month?

MS. TERHUNE: We have an interpretation from the Building Inspector. Under New York State Law the Building Inspector has the first say at whether or not a use is permitted. They have some interpretation authority. This Board can grant waivers and variances, etc.

The Building Inspector did send a letter back in September. It basically stated to the Applicant, with copies to the ZBA, the Village Board, the Town Board, the other Building Inspector, and me, his interpretation as regards to use of the building as a fitness gym. He determined/interpreted that “gym or fitness center is not specifically listed as a specific use.” As you know, oftentimes we can’t list every single use. Of the uses listed, the most appropriate is personal service shop, which includes professional studio and similar shop in the description. John stated that he “was inclined to interpret that the use requested fits into the category of personal service shop, except that the Village Planning Board may prefer that a new use be created and adopted into the Zoning Code for the specific

gym use.” He goes on to say “that although the Town and Village Zoning Codes are separate, they are related and are covered by a single ZBA, this Board. Recently, the Town considered an application for a gym use and it was decided to add the specific use to the Town Zoning Tables as a Special Exception in the Business District.” Did that get done, or is that being done?

MR. HAGER: That is what Erik is referencing. That applicant had submitted under a different use and the Planning Board made that recommendation to the Town Board to modify the Code and add a new use. It was decided to make to make a special exception use rather than a permitted use.

MS. TERHUNE: I think this Board does not have an application before it for an interpretation. That does not mean that you can not consider that once the issue has been raised before you. The Building Inspector has opined that he thinks it is a personal service use. You have that in front of you.

MR. HAGER: We did discuss that at last month’s meeting, and everyone seemed to concur.

MS. TERHUNE: In fact, the parking application was changed based on that.

MR. JANNARONE: What did we come up with, please refresh my memory?

MR. COCKRILL: Required 14, having 1, so a variance of 13.

MS. TERHUNE: Originally, it was a much higher calculation.

MR. COCKRILL: Originally, it was 58.

MR. HAGER: That was applying the parking regulation for a gymnasium and auditorium, that type of scenario.

MS. TERHUNE: Which this Board determined was not really the same thing.

MR. JANNARONE: I have no problem with the parking, in general, except for the fire department issue. That is the big thing before us.

MR. DEVEREAUX: We addressed that at the last meeting and basically, you were going to try to do something. But as you say, human nature being what it is, people, if they are hurrying too, to get into their workout, they might be tempted to go into that parking lot.

MR. COCKRILL: I agree, but that would go for any business within a ½ mile radius of that parking lot.

MR. DEVEREAUX: I submit that it is not the same. I just think that if, in fact, it worked the way you are proposing, with everyone parking in the town municipal

lot, we even talked about it that night and looked out there to see how many vacant spaces there were. There are plenty of parking spaces there. If there were not enough parking there, there are some on the street. To get back to the fire department's issue, who is going to police it? You may have talked about it.

MR. COCKRILL: We said it would be in our contract, we would provide a sign out there with our logo on it, and our coaches would be checking. We would also provide a sign as you enter the gym to say "if you park here, move your car immediately.

MR. DEVEREAUX: It seems appropriate. I think what you are saying is so, but I think we could probably have the police cranked in for the first several days to check out the lot, some way beyond you just having them sign something. I am not sure if that is even feasible.

MR. COCKRILL: What use of that building would be authorized if you restrict people from putting a business in there just due to that parking lot?

MR. DEVEREAUX: Well it is a critical one it is not just another business.

MR. JANNARONE: He means can that building be used for anything?

MR. DEVEREAUX: Probably not, but who knows like an auto body shop or something?

MR. JANNARONE: Even that would have customers.

MS. TERHUNE: The issue is that in general land use controls, use not ownership, the issue that we might want to think about, and I don't know that we have to make a decision tonight, is any business that goes in there is going to require parking. If no business is allowed in there because of that, that could be a real serious problem.

MR. DEVEREAUX: It could be a legal matter.

MS. TERHUNE: Right. Because essentially you have taken the property, you can't use it.

MR. DEVEREAUX: You can't prohibit people from using their property.

MS. TERHUNE: Unless there was some kind of use that would never require any parking. So it might be something to think about perhaps because it is a valid concern raised by the fire department, this Board might, and has the authority, to impose pretty strict conditions on the use of that building perhaps more than just signage. I am not sure what it would be.

MR. DOHERTY: Would you gentlemen like to table this and look further into it?

MR. JANNARONE: I think that there are so many issues here that we should have the full Board here. I don't feel comfortable voting on this with just three of us here tonight.

MR. DEVEREAUX: Yes, we should table it.

MS. TERHUNE: May I ask, did we hear back from the Orange County Department of Planning?

MR. DOHERTY: I did not get that yet.

MS. TERHUNE: I emailed this off on the 22nd.

MR. DOHERTY: It was not in my box.

MS. TERHUNE: A decision could not be made tonight anyway, because we need to provide at least 30 days to hear back from the County. So I would suggest that it makes sense to table it as has been suggested and think about perhaps a discussion with the police or some other way to mitigate the issue that is of real concern.

MR. JANNARONE: Is that something that we should have you investigate?

MR. DOHERTY: I can talk with Chief Scott about it. Is that private property?

MR. McCORMICK: Private property.

MR. DOHERTY: In my mind, I don't think the police can enforce parking codes on private property. I will speak to them about it. I could be wrong.

MR. DEVEREAUX: I submit they have a relationship.

MR. DOHERTY: I understand that.

MS. TERHUNE: Who owns the parking lot?

MR. SMITH: The fire department.

MR. DOHERTY: As I understand it, the Village owns the equipment and you own the property and the building.

MR. SMITH: It is a not-for-profit.

MR. DOHERTY: I will speak with Chief Scott about it.

MR. JANNARONE: Is there anything contractually that could be done to make it stiffer. I don't see anything leaping out at me.

MS. TERHUNE: I will have to think about it.

MR. FATIS: What about a permission of authority. What if the property owner gave a permission of authority to the police department?

MS. TERHUNE: If you could consider the fire department some type of municipal entity, then I think you could do something like that. It is a really good suggestion, and I was thinking maybe something like that. The fire department is a not-for-profit. But again, the police generally won't, unless they can implement a tow away zone or something like that with stickers. That is generally in municipal parking lots. I can look into that.

MR. DOHERTY: My only question with that is it would require all the members of the fire department to have stickers to prove that they deserve to be in there. The onus should be put on the cross fit.

MR. JOHN GUNZA: I know it is closed, but may I speak? John Gunza, 50 year member of the fire department. We have had trouble with this parking lot for years. We have our own signs up "No Parking – Tow Away." You go to the police and they say "they can't touch this because it is private property." They say to have a member sign a complaint. Why should a member have to sign a complaint and have a cop come down? Half the time they don't come down. I don't think it should be going on.

MR. DOHERTY: My feeling is and I will again go back to this, I don't think the onus of patrolling and policing that lot should fall on the fire department. You have much more important things to do.

MR. GUNZA: And why should the police department do it, it's private property?

MR. DOHERTY: I fully understand, I don't think you need the additional burden to patrol your own lot. I live across from the park and I don't like when people park in my driveway, but they do. I am in agreement with Jack and Ray I would like to have the full Board here before we make a decision on this.

MR. JANNARONE: And we can't make one anyway.

MR. DOHERTY: Because we are waiting on the 239. That binds our hands.

MR. McCORMICK: I think it is a public safety issue too, because you have people walking on the sidewalk and out on the street. Even our own members are forced to park on the street which I can't say doesn't happen when you are in for a major event. We have to be concerned with the general public, too.

MS. TERHUNE: Was the owner here with you the last time?

MR. COCKRILL: He was.

MS. TERHUNE: I thought I had an affidavit from him.

MR. DOHERTY: His endorsement.

MS. TERHUNE: I don't know why I don't have that in my file. I will need a copy of that.

MR. DOHERTY: As it stands, we have to table this and wait for the 239 and also wait until our full Board is here until our next meeting, November 16, 2015.

MR. DEVEREAUX: And Alyse will do some thinking, too.

MS. TERHUNE: I will do some thinking. I think this is a problem you will face no matter what goes in there.

MR. SMITH: I have a brief question and you are under no obligation to answer. Am I right to surmise that this Board is saying that this is a permitted use? I read that exact definition like 5 times. I think a fitness centers are important, but I think there is a right way to do it. There is a reason we have zoning and I think if you pulled his application for fitness center, it would still be worthwhile to mention to the Village Board that we are in antiquated code here that is not living in this century. It is unfair to the Building Inspector and unfair to you to be operating outside of your comfort zone when you are doing it. We want it well thought out.

We made a special exception so it would go to the Planning Board. Professional services, all those that we loop into there are permitted uses in the Business Zone so they will not go to the Planning Board. That is why it is better to have some of these things in the Table so that you can say "fitness center is a little more than our regular store there," we would like the Planning Board to have the purview for that. That is the reason to have a well thought out code. The process is started, but I think when you get something like this, it is worth a local law change. After pushing, that was closed out within a couple months.

MR. COCKRILL: You are speaking of the Fort Fitness Center?

MR. SMITH: Well, the Fort Fitness Center was a result of it, but the local law was accomplished within about 60 days, because it made sense.

MR. DEVEREAUX: The Building Inspector is the one that creates the changes based upon, whatever. John has just completed something for the village that has to do with building maintenance, as a for instance. So I submit that he make

a complete review, and while he is doing this one, if it is to be done, then he should review the whole thing and make recommendations for changes.

MR. SMITH: There are a lot of uses that could potentially be in there. For me the fitness center was an easy one because there are some things that you may not want to include, but I never really found a person that said that having fitness centers in municipalities was a bad idea. So I thought it was a big flaw in the zoning of the town and we moved to do that.

MR. JANNARONE: Remember when there was a “Curves” on Main Street?

MR. SMITH: But, just because it was there and we make mistakes in the past, we don’t want to continue them.

MR. DOHERTY: We will have to discuss this with the Village Board.

MS. TERHUNE: This will go before the Planning Board also, just so you know.

MR. JANNARONE: It will? I thought he indicated it wouldn’t?

MR. COCKRILL: No, it is.

MR. HAGER: It will be referred under a change of use.

MS. TERHUNE: It will go before the Planning Board if he gets a variance.

MR. JANNARONE: A parking variance or a use variance?

MS. TERHUNE: The parking variance is what he is asking for. I will give it some thought. There is no reason that I can see to not agree with the Building Inspector unless the Board does not agree with the Building Inspector.

MR. JANNARONE: For the reasons he addressed, are they significant enough that we should address them with the Village Board?

MS. TERHUNE: You certainly can. There is nothing to prevent you from suggesting to the Village Board that they add this as a special use perhaps. The Building Inspector and the Planning Board can do the same thing. You will find in most codes that every use is not defined.

MR. DOHERTY: It would be endless.

MS. TERHUNE: Yes. The Building Inspector opined as to his opinion as a special personal service. I don’t see any reason legally not to agree with the Building Inspector. This Board can certainly take a different tact.

MR. DEVEREAUX: Well, we are not acting tonight anyway.

MS. TERHUNE: No, you are not acting tonight, so you can give it some thought, and I, too, will give it some thought. I will look at the other uses. John and I discussed this when we were talking about the parking, and I concurred with his opinion.

MR. DEVEREAUX: Do you have a copy of that? I did not get a copy unless it is in my box downstairs.

MR. DOHERTY: I will make copies for everyone.

MR. DEVEREAUX: Might we suggest that the fire department write a letter to whomever stating their opinion.

MS. TERHUNE: They can certainly do that. They are on the record and it is noted in the minutes, but any written correspondence would also be helpful.

MR. DOHERTY: We shall see you on November 16. Thank you for time this evening. I am sure we will get our response back from the County by then.

MR. JANNARONE: The Public Hearing is closed then? We are not going to reopen it then?

MS. TERHUNE: Did you close it?

MR. DOHERTY: Yes.

MS. TERHUNE: That doesn't prevent anyone from coming to the next meeting. You have the discretion to hear comments at any meeting.

Nicole Renda, 46 Fort Putnam Street, Highland Falls, NY.

MR. DOHERTY: Next up on our agenda is Nicole Renda, is that correct?

MS. RENDA: Yes. How are you?

MR. DOHERTY: Good, thank you. You have an application here for an addition on the existing family residence to replace an existing 7 foot by 2 foot and 10 foot by 8 foot kitchen addition of a 16 by 10 foot, 20 foot by 6 foot kitchen and living space. The proposed addition is planned to encompass the existing kitchen addition. Do you all have copies of it? Ms. Renda, please go over what your plans are for this addition.

MS. RENDA: What I would like to do is my family is growing so there is already an existing kitchen that was put in some time ago. What I would like to do is just push the kitchen out and then build a deck along that side. The kitchen that is there is a galley kitchen that was once a bathroom. So for two people to even fit

in there is squishy. More space. Do you have the exact plans of the existing kitchen there?

MR. DOHERTY: It is not as expansive as that. I can't read this.

MS. RENDA: The existing is 6 by 6, basically.

MR. DOHERTY: May I see your larger one?

MS. RENDA: Sure, it is a bit written on. This one says 7.2 by 10.8.

MR. DOHERTY: You have here on this proposed laundry and pantry 6.6 by 6.6. But on the drawing that we have it says 7.2 by 10.8

MS. RENDA: One might have come from the municipality and one could have been an exact measure. I don't know. But I can tell you that it is 6 and 6 right now. Do you have the town one?

MR. HAGER: No. It is an "L" shaped addition, right?

MS. RENDA: Right.

MR. HAGER: On the long side according to my drawing it is coming out as 16 foot 10 inches. But the other side is coming out farther because you already have some structure on that side, the north side. The width is 20 foot 6 inches, the same as the house, plus the deck.

MS. RENDA: Right, which would be the same.

MR. HAGER: Another 10 foot out the back with a deck is the same as the house 20 foot 6 inches.

MS. RENDA: Correct.

MR. HAGER: The way I interpret the drawing is that the addition results in a 1.5 foot side yard on the north side.

MS. TERHUNE: She doesn't seem to be asking for that, though. She would need a variance on that side yard.

MR. HAGER: The table that was submitted has she is actually asking for a lot more than what she needs. I think that the Engineer that filled out the form was under the impression that all the existing conditions needed to be covered with the variances and that is not the way we have been handling things. So a lot of what is here really doesn't need to be considered.

MS. TERHUNE: What it looks to me like he is doing is saying it is pre-existing, but grant a variance anyway so that now it becomes conforming.

MS. RENDA: Right.

MS. TERHUNE: I think we have in some instances have done that.

MR. DOHERTY: Expand the non-conforming?

MS. TERHUNE: No, we have granted variances for pre-existing, non-conforming, so that it is not really pre-existing, non-conforming. I don't think we need to do that and it is probably not a good idea to do that.

The question I have is this side yard setback on Table.

MR. HAGER: That is not correct.

MS. TERHUNE: She needs a 6.5 foot variance, based on your calculations, John.

MR. HAGER: Minimum is 8 feet. She is proposing 1.5 feet.

MR. DOHERTY: That has to be changed.

MS. TERHUNE: That is the variance that I see being necessary.

MR. HAGER: That one, and the separation.

MS. TERHUNE: Right.

MS. RENDA: So how much is it, the existing? So the numbers are wrong. The engineer brought it in.

MS. TERHUNE: The existing is 1.7 feet. Let me show you. You required 8. You have 1.7 and you want 1.5. From the 8 you need a variance of 6.5.

MR. HAGER: Now, it may be appropriate to use the 10 foot requirement rather than the 8, because the garage on the opposite property line is only 2.5 feet clear of the line. You don't have the 10 feet on that side either.

MR. DOHERTY: That is on the Mrazek side?

MS. RENDA: No, that is on the Haight side, the south side.

MS. TERHUNE: So you would figure from the greatest necessary side yard setback, 8?

MR. HAGER: You need 8 on one side and 10 on the other. You have pre-existing conditions on both sides that are less than 8, so the way I usually interpret it is, if you have already used your small side, the variance should probably be from 10 rather than 8.

MS. TERHUNE: Is that typically how you apply it?

MR. HAGER: That is usually how I apply it.

MS. TERHUNE: You didn't apply that here. You went from the 8. Is there some reason that you went from the 8 instead of the 10?

MR. HAGER: I would go with the 10 because of the garage. The house has 12.7 on that side. The garage only has 2.5.

MS. TERHUNE: She would need what, an 8?

MR. HAGER: She would need an 8.5 variance.

MR. DOHERTY: For the side yard.

MS. TERHUNE: Here is what you need. It is the same thing, except you would need an 8.5, then you would still need this variance.

MS. RENDA: That would stay the same, right?

MS. TERHUNE: Yes.

MR. JANNARONE: So we are saying that the other pre-existing, non-conforming we are not going to deal with.

MS. TERHUNE: That is up to you.

MR. JANNARONE: I don't think we need to do that.

MR. DOHERTY: The problem is the extent of the non-conforming structures in the Village.

MR. JANNARONE: I know.

MS. TERHUNE: If you grant a variance and then they do something else, then it is a variance from the variance that you granted. It is just compounded.

MR. JANNARONE: How many variances does she need?

MS. TERHUNE: Just 2.

MR. DEVEREAUX: It is more than 2.

MR. DOHERTY: Question? No. For the side yard she needs an 8.5 and the separation of the accessory building from the main building, the variance is 5.3. That would be the 2. It is in there.

MS. TERHUNE: So when he redoes this, have him modify this that says it is pre-existing and there is no variance required. There are 4 of them there.

MR. DOHERTY: That would be the lot area?

MS. TERHUNE: Yes, there are 4 of them there.

MR. HAGER: The side yard setback line 10 foot zoning requirement remains. 1.7 foot existing condition, 1.5 feet opposed. 8.5 foot variance requested.

MR. DOHERTY: Correct.

MS. TERHUNE: Then the separation.

MR. DOHERTY: Question?

MS. RENDA: Yes, I got it, but right here, you are talking about the front yard setback?

MS. TERHUNE: All those.

MR. DOHERTY: Have them listed as pre-existing.

MS. TERHUNE: So, on these four he would just say "No" instead of "Yes" pre-existing, non-conforming, no variance required?

MR. DOHERTY: Do you follow?

MS. RENDA: Yes, I do.

MR. HAGER: How about the combined side yards?

MS. TERHUNE: Is that a 2 inch difference there?

MS. RENDA: Is that the total, John, you are talking about?

MR. HAGER: The two side yards are supposed to add up to 18 feet. So, again, if you are going back to the garage, you have 2.5 on one side, and 1.5 on the other. If you are going to the actual addition that is being built, then you probably have your 18.

MS. TERHUNE: You mean not considering the garage, is that what you are saying?

MR. HAGER: The garage pre-dates. It is kind of a gray area. We applied the side yard based on the fact that the garage is there and you only have a 2.5 side yard. The addition, you are adding an addition over in an area where you will only have a 1.5 foot area side yard to the north. To the south, I believe I scaled it, you have the 18.

MS. TERHUNE: You mean off the deck?

MR. HAGER: Off the addition.

MR. DOHERTY: I was reading 4.7.

MR. HAGER: 4.7 to the garage and the width of the garage and then you have 2.5 feet clear. I think you have the 18 when you add it all up. You have two ways to interpret that. You can interpret it that it needs a variance or that it doesn't. That is what has to be decided whether we need to have a variance for the combined side yards.

MS. TERHUNE: I don't understand. If we count the garage....

MR. HAGER: The strictest interpretation would be the garage is 2.5 feet clear of the south property line; the house is 1.5 feet clear of the north property line. That adds up to 4 feet. So the total of both side yards is 4 feet. So you need a 14 foot variance. The other way to look at it is that you are only adding the addition. If you measure from the addition to the side yard, and you add those dimensions all up, you have your side yard combined total. I know it is confusing.

MS. RENDA: I am confused.

MS. TERHUNE: The garage is there, you can't just ignore it. Now you are putting a building that essentially knocks off the required total side, because you are blocking that side yard, I would say that you would need a 14 foot variance on total side yard.

MR. HAGER: I don't disagree.

A discussion was held on the variance required.

MS. TERHUNE: The third variance required is 14 foot.

MR. HAGER: The separation is correct.

MS. TERHUNE: You would need to get this modified.

MR. DOHERTY: So you will get this all amended.

MR. HAGER: The map is fine, the table needs to be amended, right? It needs to be in my office 10 days before the hearing.

MR. DOHERTY: Right.

MS. RENDA: When is that?

MR. DOHERTY: November 16, 2015.

A motion was made to set a Public Hearing for this project for November 16, 2015.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

MR. DOHERTY: You will meet with John. You have mailings and postings to do. We will do the advertising.

Fayed Realty, Kleitz/West Street Interpretation

MR. DOHERTY: Please give us a description of what the proposal is.

MR. FATSIS: We are here before the Board looking for an interpretation relating to a PRD (Planned Residential Development) under Section 240-29. By way of background, you need to look at Section 240-29 in connection with Sections 208 and 209. Section 208 tells you what you can have and then it tells you in Section 209 what is allowed in the particular code. For example, this is R-4. In a PRD it allows for special exception in the R-4 Zone for single family and two family. I am sure you know this Code better than I do. Under the PRD it allows a special exception for single and two family residences.

Our question is based upon a single family, multiple dwelling. In normal R-4 you are allowed single family, two family and single family, multiple dwelling. Under the Building Code of the State of New York you are allowed to have a one family and a two family and a single family, multiple family dwelling. They are considered the same. It is considered a single family because it has a building wall that goes from all the way down from the bottom, all the way through, and it has a front and a back at a minimum, the end units, and it is three or more units. So, for example, you could have where you have a four unit, multiple family, single family, multiple dwelling and it allows two interior units and an end unit and an end unit. The end units have more than two open sides. The middle units could be a three family. A three family unit would have one open area.

The Building Code of New York State applies to all but one and two and multiple single family dwellings. The Residential Code of New York State in Section 202 contains a similar but not identical definition of dwelling and dwelling unit. So

Residential Code of New York State in Section 202 also defines the term townhouse as a single family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.

The query that we have is whether in a planned residential development. Right now tentatively I don't believe the finalized plans have been stamped, but what you have in front of you is three two family units which allows for six family units. One of the proposals that we have and we have not actually presented this to the Zoning Board is if I may, present just as a rough copy, I believe John has seen this proposal with the eight units.

MR. DEVEREAUX: Alyse, a question, if this is a special exception, why is it not going to the Planning Board?

MS. TERHUNE: It has been before the Planning Board.

MR. FATSIS: The potential plan would provide for eight units. Under the Code, that area allows up to 13 units under the actual amount of land that is provided for here it would allow 10 units. We would be asking for an eight unit permission, as you can see with the PRD, it would provide for a dedicated portion that would go back to the community, as like a playground for the community in that area.

What is essential is how the Zoning Board would define this special exception, whether it would allow for in other aspects within the State the single family, multiple dwelling, the townhouse are considered a single or two family, there is no distinction. Our Code provides for a distinction. It is essentially restricting the type of ownership. If you were to have a one or two family, or a three family, the State doesn't consider it any different. For example, the applications to the State for the Code Enforcement Administration Building Permit application has the single family, the two family, and the single family multiple all on the same application under the purposes as were defined earlier. For example, this is just an overview of an instructor's manual for the Residential Code and it provides for the single family, the two family and the single family multiple family dwelling together.

My client believes it would be a better use for the property with more benefit for the community as a planned residential development which would allow a better use, more taxables for the community, and it would actually give a portion of the property back to the Community for a playground area, which would be developed and paid for by my client. And then either provided to the community as a dedicated parcel or it would be maintained by a not-for-profit with a fall back that the community could have it if the not-for-profit ceased to ever be in existence.

So essentially we are looking for how the Zoning Board would interpret the special exemption if it would allow what it normally allows in an R-4, which is single family, two family, and single multiple family, or it would hold to this burdensome definition that is allowed is the planned residential development that only allows for a single and two family. It doesn't seem to be a like a rational basis why the multiple families are not permitted.

MS. TERHUNE: So this has nothing to do with whether they are condos or not?

MR. FATSIS: Well it could. A townhouse and the single family multiple residential is already accepted by the state as permissible.

MS. TERHUNE: I want to make sure I am understanding what you are asking for. Are you asking the Board to interpret whether townhouse development under Section 240-29t is a permitted use here. PRD's are a permitted use and townhouse development is not a permitted use. Are you asking if townhouse development is a permitted use?

MR. FATSIS: A townhouse would be permitted under a normal R-4 and in the PRD it is not. In other words the townhouse development is not allowed in the R-4, but in the PRD it is a special exemption for the single and the two family but the State does not differentiate between the single, the two family, and the single multiple family dwelling. So the ownership, whether it was a condominium or whether it was a townhouse, really not a condominium, but more so for the townhouse.

MS. TERHUNE: May I see the application? So you are asking for an interpretation or a variance from Section 240-8 and 240-9. I thought it said 240-9q.

MR. FATSIS: Section 240-9q is where it allows for the PDF.

MS. TERHUNE: Section 240-8 is use. Are you asking for a use variance or a use interpretation?

MR. FATSIS: Well an interpretation of whether the townhouses would be allowed under the single and two family, under special exception.

MS. TERHUNE: I thought what you were asking for is whether condominium use is allowed in a planned resident development. Is that not what you are asking for?

MR. FATSIS: Well it could be, because in other words, whether it was condominium or townhouse it would be for the same type of development where it has a separating wall from foundation all the way through. The difference between a condominium and the townhouse is just the form of ownership.

MS. TERHUNE: Right.

MR. FATSIS: I guess I could expand the query in asking whether a single multi family dwelling, which is three more units under the same auspices, whether townhouse or condominium. The townhouse is specifically referred to in the State Code. We could expand the query and include condominium which is really the same type of building just a different form of ownership.

MS. TERHUNE: A condominium is a form of ownership which cannot be regulated. This needs to be changed. I spoke with Albert on this issue and I even referred him to someone who I know is an expert on condominiums. I thought you were coming in for an interpretation of whether this plan that you are showing here, which has already been approved, this subdivision has been approved but not signed yet, but there have been extensions.

My understanding was that from a financial perspective, your client could not get financing for two family residences. So they came up with this plan under PRD and they wanted to put in townhouses because they are on individual lots. In discussing that, the issue with these is that they could be condominiums because under the land use you cannot regulate ownership, and you know that. I have advised the Village Board of that. This needs to be changed because you are trying to regulate ownership, and you can't do that. So condominiums are off the table. My only discussion with your client was if two family is a problem, they could be condominiums. That is up to your client whether he wants to do that or not. In the meantime, your client came in and said well "you know what, that is not enough." I think he originally wanted 10.

MS. FATSIS: It can go up to 10. They wanted to give something back to the community. There was discussion as to the purpose of the PRD.

MS. TERHUNE: There was a whole discussion at the Planning Board about that and I opined at the time and I think, John, you were involved in this as well, that PRD's are fine but that townhouse developments as defined in the Code are not permitted. What your client was doing is saying that "we want PRD's but we also want townhouses." There is no question that a townhouse is a single dwelling. That was never a question.

The issue became that what your client wanted to do is have a PRD under 29q but then apply the dimensional requirements under a townhouse development and I opined at the time that, in my opinion, that is not permitted, because regardless of what the State Code says, you can't disregard the dimensional requirements, in R-4 because it's a townhouse development because townhouses are not permitted.

Then there was something else, John, remember, in reference back in q back to the dimensions.....

MR. HAGER: There is no pathway from PRD to zero lot lines.

MS. TERHUNE: Right, that's it.

MR. HAGER: That ties in with if you are trying to use dimensional regulations with a townhouse development. There is nothing there that connects the two. The section for PRD does reference other sections for one or two families and even the multiple residences that you apply the appropriate sections, but it does not get you there for townhouses.

MS. TERHUNE: The other discussion we had was your client said "well, 13 per gross acre in R-4." Again, my opinion is that PRD's are not really structured for a property that is less than an acre.

MR. FATSIS: If you look at #4, Subsection 4, where it says in an R-4, on sites of one acre or more. It would allow something under one acre.

MS. TERHUNE: I know, it does. I think that is probably not a good planning device and I think when the Code is redone, they should consider that. But that does not get us past the issue, because townhouse development is specifically excluded in R-4, you can't really apply the dimensions of townhouse, which are much smaller.

MR. FATSIS: Would it really be a townhouse development if it is done under the guise of a PRD? That is where the Board would have room.

MS. TERHUNE: How is this not a townhouse development? You are applying the dimensions from townhouse.

MR. FATSIS: I understand that. If you move forward under the concept of a PRD, and it is allowing single and two family, but not townhouses, and it is also not allowing condominiums which we know as written would be prohibited to keep the condominium out, we would be asking for the interpretation that would allow for the building of a townhouse which is single families and it is just a form of ownership.

MS. TERHUNE: Again, what is your question before the Board? Do you want the Board to opine make an interpretation as to whether Section 240-29q which is townhouse is permitted here, because a townhouse is a single dwelling?

MR. FATSIS: That at a minimum. Section 240-29q was the PRD.

MS. TERHUNE: Sorry, you know what I am talking about.

MR. FATSIS: Absolutely, I know what you are talking about. That is one interpretation. It is a single family. Obviously, when this was written, not everything can be seen in advance. That is the beauty of the PRD, that it allows

the Boards some level of flexibility in customizing the decision based on the particular subject. It is a single family dwelling. It is almost as if you are punishing (perhaps the wrong word) the person for having combined walls instead of having separate units. Even if you have a schematic, like was put forth here, where you have two family, two family, two family, and we have the distances between the buildings that are set forth, or you have two families and they are together side by side and then you have the third one now somehow it has changed it so irretrievably that it would not be allowed in the PRD.

MS. TERHUNE: Mr. Fatsis, could I ask you to be more specific, maybe draft a memo to the Board to be specifically asked, so that I could advise them. I don't want to offer an opinion if I am opining on something that is either not being asked or that I am not sure about.

I ask this, if it is okay with the Board, maybe because I am not exactly sure of what you are asking for. Is it to just give you a use variance for a townhouse development? I think that is what would have to be done here, but maybe I am not really understanding. I understand a townhouse is a single family dwelling. I understand single family dwellings are allowed in a PRD. But I don't think we get from that to and now we are going to apply the dimensions in a townhouse development. Maybe, if you could help me to better understand what it is you are asking for and, why you are asking it, and the logic behind it.

MR. FATSIS: That is perfectly understandable. I believe that your assessment is what we are looking for in just that aspect alone. The difference is, I guess, whether we would need to require the townhouse dimensional requirements for a townhouse development. Or in the PRD, whether you would just simply go along with the single family requirements.

MS. TERHUNE: Well, let's be specific of what you actually want. Are you applying the townhouse development, well you are because you have a zero lot lines here. So that is what you are asking for. But I would like you to just write it up so I know. We have opined at the Planning Board to your client, John has written memos on this. I was very specific that I did not believe, and it is clear on its face, it is not allowed you can't just say it is a single family dwelling, therefore it is a townhouse, therefore, I can have zero lot lines and apply the smaller dimensions, assuming that is what happened. But, again as I said to your client, if you can convince John and me that somehow we are misreading the Code or there is something else we should consider, then I would be more informed when I issue an opinion to this Board, which I am sure it will ask me for.

MR. FATSIS: I appreciate that opportunity to further clarify the issue here. You, at least, wouldn't have any issue with this same project as it stands now being in the form of a condominium. Is that correct?

MS. TERHUNE: Condominiums are not allowed. What I would advise this Board if you ask for an interpretation of whether that is an appropriate

restriction, I would advise this Board that it is not. And I have so advised the Village Board, although I am not sure they have really focused on it. But that kind of question would focus attention on this. If you want to include that in a separate request or as part of this, that would be fine.

MR. HAGER: Two things that I think are worthy of noting. In the Use Table it mentions residential uses. It says single family detached dwelling. Then there is two family detached dwelling. So a townhouse is an attached. They are single family attached dwellings.

The other thing is in Section 240-29, the one that gets into the uses under the PRD. It mentions under letter q, #2, residential units may be in a single family, two family or multiple family dwelling structures. It strikes me as a little odd that they have included a provision here for apartments, multiple dwelling structures, but they have not allowed for multiple single families. I am not saying that multiple single families would be a normal permitted use, but under the PRD it does not specifically get you there but it does get you to multiple dwellings. Then we do have specifics about separation from one building to the next and conventional stuff. They left out that and the connection to get you to the dimensions for your typical layout of the townhouse zero lot line type of scenario.

MS. TERHUNE: I am not saying that the Code couldn't be clearer or maybe modified. For example, usually apartment buildings like townhouse developments typically are on a larger lot than one acre. It can be done, but I have not seen any other Code for less than five acres. I think the Code needs to be tweaked, but we are stuck with what is in front of us. This Board can interpret that and can vary it, but we have to begin at the beginning.

MR. FATSIS: I will speak with my client and further refine what exactly he would like this Board to opine on. I think your suggestion is probably best to be taken advantage of, and further clarify. It may be a multiple part question, but that might give guidance to the Board as to what we are actually looking for.

The point that John brings up is somewhat problematic. Specifically, in the statute itself it is allowing for single family, two family, multiple dwelling. Again, it doesn't distinguish at any point. It is the term townhouse that we are getting caught up on.

MS. TERHUNE: We are getting caught up on the fact that there is the PRD section and then there is a separate townhouse development section. Perhaps if that townhouse development section, with a different dimensional requirement weren't even in the Code we might be having a different discussion. But it is there and we have to address it.

MR. FATSIS: To get on the November 16 agenda, do we need to do anything separate, or differently, or can we just get a memo to you and the Board?

MS. TERHUNE: Get the memo in if you want to get on the November 16 agenda.

MR. FATSIS: The normal protocol is 10 days, prior to the meeting?

MS. TERHUNE: I am not advising that we set a Public Hearing.

MR. FATSIS: No, not at this time, we are still looking just for an interpretation. I was not sure of how long in advance to the meeting.

MS. TERHUNE: I think it is 10 days, right?

MR. DOHERTY: Any information pertaining to an application has to be submitted 10 days prior.

MR. HAGER: Will that give you enough time, Alyse?

MS. TERHUNE: Yes, I think so.

MR. FATSIS: The only reason I am asking is that Albert is away on military training and I don't know exactly when he will be back. It might be a two week training with the Reserves at this point. I am not sure. I should have enough time to speak with him.

MR. DOHERTY: You have until November 6.

MR. FATSIS: I appreciate everyone's time. Thank you.

MR. DOHERTY: Gentlemen, any other discussion.

At 8:35 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

Respectfully submitted,

Fran DeWitt, Recording Secretary

**The next Consolidated Zoning Board of Appeals
meeting is Monday, November 16, 2015**